IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.365 OF 1997
WITH
CIVIL APPLICATION NO.206/97

1. 'Savera' a Society registered
under the Societies Registration
Act 1860, through its President
Smt. Tara Kerkar, having its
Office at Fakir Gally, Opp. MPT
Quarters, Baina Sea Beach,
Baina, Mormugao, Goa.

2. Smt. Tara Kerkar, major in age,
Citizen of India, Municipal
Council, now residing at
Baina, Vasco da Gama, Goa.

3. Shri Christoper Braganza,
major, citizen of India,
resident of Baina, Mormugao, Goa.

4. Smt. Severina Correia,
major in age, President Baina
REsidents Association,
Resident of Baina, Mormugao, Goa. ..... Petitioners.

Vs.

1. State of Goa, through the
Chief Secretary, having Office
at Secretariat, Panaji, Goa.

2. Director of Social Welfare,
C/o. Directorate of Social
Welfare, Govt. of Goa,
Panaji, Goa.

3. Inspector General of Police,
having Office at Police
Headquarters, Panaji, Goa.

4. Collector and District
Magistrate, South Goa,
having office at South Goa
Collectorate, Margao, Goa.

5. Dy. Collector and Sub-
Divisional Magistrate, having
Office at Vasco da Gama, Goa.

6. Union of India, through
the Secretary, Ministry of
Welfare Department, Women
& Child Development,
New Delhi. ..... Respondents.

Shri Saryesh D.K. Malyeker, Advocate for the
petitioners.

Ms. W. Coutinho, Govt. Advocate for respondents No.1 to 5.

Mr. J. Vaz, Additional Central Govt. Standing Counsel for respondent No.6.

CORAM : F.I. REBELLO &
P.V. HARDAS, JJ.

DATE : JULY 21, 2003.

ORAL JUDGMENT: (Per REBELLO, J.)

This writ petition was filed by the petitioners, of which petitioner No.1 is a Society, registered under the Societies Registration Act, which has as its objectives, amongst others to help its members to defend moral, cultural and social interest. The other petitioners are individuals who are all residing within the area of the Municipal Council of Mormugao. In the petition,reference is made to Municipal Wards No.7, 8, 9 and 10 of an area identified as Baina in Mormugao Municipal council. Ward No.7 has four parts, namely 18, 19, 20 and 21. A part of Ward No.7, is an area generally referred to as 'Red Light Area'. It is the case of the petitioners that on account of unfounded social sanctions and the circumstances of being born poor, ill-fed, ill-housed, ill-educated and on top of it being illiterate, certain women, most of whom are migrants from other States, have been trapped in the unorganised flesh trade. The petition filed is with the object of their readjustment and rehabilitation by economic empowerment, social justice and self-sustenance, giving them equality of status and dignity as persons in truth and realty and for their social integration in the mainstream of the society. It is pointed out that pursuant to the Judgment, in the case of Gaurav Jain

Vs. Union of India, 1997 (8) SCC 114, the Apex Court has issued various directions including setting up of State Committee, Local Committee, Advisory Committee and Monitoring Committee, setting up of Child Development and Care Centre, Service facilities, Institutional Care.

The Government of Goa has not taken steps for compliance of the directions contained in the Judgment of the Apex Court and on the contrary, has taken aggressive attitude against the fallen women and other residents of Baina area, by committing large scale police atrocities. It is contended that instead of treating the sex workers with sympathy, the police officers at Vasco have started assaulting the sex workers at Baina red light area, including the people doing business in the area, visitors in the area, members of families and the guests visiting the area. It is pointed out that there are no proper facilities, including medical care facilities and, therefore, it is necessary to take steps so as to treat the women involved in the flesh trade to leave with human dignity and see to it that their children are rehabilitated and do not fall into the same trade and for that purpose to take steps to counselling, cajoling and coercion. It is pointed out that Baina red light area is a declared slum area and, therefore, was entitled for improvement within the declared slum area.

2. It is then pointed out that when a Member of the National Human Rights Commission was camping in Goa, a complaint was addressed to the National Human Rights Commission. The Commission issued notices to the Chief

Secretary, State of Goa, Inspector General of Police and the Collector of South Goa and also issued interim directions. By the present petition, the petitioners have prayed for various directions, including setting up of a Committee for supervising the rehabilitation programme as would be ordered by this Court. Further to direct the Committee to function under the supervision of this Court, so as to improve the situation and curb and prevent the flesh trade, by rehabilitating the fallen women and other people around into better persons by opening counselling courses, educational institutions, and starting classes for teaching self employment Various other directions are also sought, which we need not advert to. The interim order passed on 24.7.1997 by the National Human Rights Commission forms part of the petition. The Commission noted that these women have come from Karnataka, Andhra Pradesh, Maharashtra and few other States and are living there peacefully between 5 to 30 years without causing any inconvenience to anybody. The order notes that the people staying therein have no complaints against them and they should be treated humanely and if they have to leave the place, the state should provide reasonable alternate accommodation. Commission noted that some of them have school going children. Commission noted that the ladies in locality, most of whom are prostitutes, are subject to threats of eviction and are being beaten up and harassed by the police as well as some groups of criminals and considering that issued notices to the authorities. The Commission directed all the authorities concerned to desist from taking any action to evict the persons in the locality and to afford police protection to the

residents from criminal elements.

In the meantime, this petition came to be – filed and came up before this Court for the first time on 20.10.1997. It may incidentally be noted that the State Government before the National Human Right Commission has taken a stand that the Commission would have no jurisdiction in respect of the said subject-matter. On queries with the State Government during the course of the hearing it is now pointed out that no further directions have been received from the commission or any authority thereafter.

The National Commission for Women also intervened on a complaint made to them on behalf of the sex workers and appointed a Commission to look into the grievances. A Committee was constituted to be headed by Justice G.D. Kamat (Retired), former Chief Justice of Gujarat High Court.

3. Civil Application No.206/97, was a communication addressed by 11 ladies, to the Court who were residents of Baina and other parts of Vasco-da-Gama complaining of various sufferings they had to face due to prostitution being carried out in the area. They have set out their grievance and have prayed that the Government should be directed to conduct necessary survey of the area; to post honest and good officers by transferring the present ones and to check harassment meted out to them by the criminals, pimps, etc.; to direct the police to verify the girls forcibly brought to the flesh trade and release them from the clutches of gharwalis and pimps and help them

to go back. It is pointed out that as they have come out openly against these people, they would not be able to stay in the area due to terror and anger of these criminals and pimps.

4. In response to the petition, the Superintendent of Police has filed an affidavit on 25.11.1997. It is denied that police were assaulting the women and that several sex workers had been removed from their hutments either in the monsoon season or otherwise. It is pointed out that there are seven Non-Governmental Organizations which have vowed to eliminate the red light area from Baina on the ground that it poses health hazards and was becoming a breeding ground for crime. It is stated that there are often conflicts between such associations and brothel owners and sex workers and in these circumstances, the police have to face the delicate job of avoiding such confrontations which result in law and order problems. The area, it is pointed out, is a health hazard as a large number of persons and commercial sex workers who are affected by venereal diseases. A number of tourists visiting Goa also visit this area and in order to ensure that prostitution in this particular area is effectively controlled, the police have cordoned off this area and have posted police at various strategic points to caution the visitors in this area, specially tourists against the potential danger. It is on account of this that allegations are being made against the police. In view of the steps taken the number of visitors have declined and this has affected the large scale business carried on by the bar owners/restaurant owners, etc. Many Commercial Sex Workers (CSWs) have left the area.

It is then pointed out that the structures occupied by these CSWs, comprise of wooden structures, divided into various compartments and some of them are of bricks. The persons managing this business, are called Gharvalis/Brothel keepers and they manage to bring them from neighbouring States and majority of them are from Andhra Pradesh , Karnataka, Maharashtra and Tamil Nadu. The police have initiated action under I.T.P.Act and cases have been booked against the CSWs and Gharvalis. It is also pointed out that the place has become a breeding ground for crimes. Several serious crimes including murders have taken place in this particular area. It is also pointed out that the place is also favourite for secreting away stolen property and harbouring of criminals. Only a part of Baina is being occupied by these CSWs and majority part is the locality inhabited by descent people from all walks of life The red light area is located close to the place where descent people are residing and considerable prejudice is being caused to them and in fact complaints are received that there are knocks on their houses during late hours of the night.

5. On behalf of the State, an affidavit was filed by the Director of Woman and Child Development, who is also a Member of the State Commission for Women. It is set out that the Government has constituted a Commission known as "Goa State Commission for Women". The matter of CSWs at Baina was taken in hand by the Commission. It is pointed out that for the purpose of rehabilitations of rescued sex workers and their children, the following places exist:

(1) Asha Mahal at Taleigao;

(2) Protective Home at Merces; and

(3) Bal Niketan for Children.

Asha Mahal is a non-Governmental Organization aided by the Government of India and the remaining two are run by the Government of Goa. It is set out that from the interviews held with the sex workers at Baina, it was revealed that there are hardly any child CSWs or children of the workers and from the information received, it is found that they are sending money to their native places for their children's education. An additional affidavit was filed on 4.5.1998 pursuant to the National Commission for Women setting up of the Commission. It was pointed out that unless some concrete proposal/requisitions are received either from the National Commission for Women or the Enquiry Committee which has not so far been received, it is not possible to place the matter before the Government.

6. Further Affidavit dated 1.7.2003 has been filed by A.K. Wasnik. In that it is pointed out that the Government of India, Ministry of Human Resource Development (Department of Women & Child Development) have directed all States/Union Territories to submit biannual report on the action taken pursuant to the Judgment of the Apex Court in Vishal Jeet, vs. Union of India and ors. A.I.R. 1990 SC 1412. The Department accordingly has been sending biannual report in the prescribed format. By letter of 15.5.03, the Government of India, Ministry of Human Resource Development (Department of Women & Child Development) have directed all States/Union Territories to file

separate reply by 15th July, 2003 on action taken on implementation of National Plan of Action on Combating Trafficking and Commercial Sexual Exploitation of Women and Children pursuant to Writ Petition filed by Shakti Vahini. The Government is taking steps to file return before the Apex Court. The Government has also appointed Special Trafficking Police Officers to maintain strict vigil in their respective areas to check child prostitution and they conduct regular raids in areas if it is known that child prostitution is being carried on. An Advisory Committee has also been set up to make suggestion to eradicate/check child/women prostitution. A protective home-cum-reception Center has been set up where children/women rescued from prostitution are kept. A five members panel is also constituted to suggest ways to help these rescued children/women. These rescued children/women are provided shelter, food, clothing, at the protective homes Medical facilities are provided by a visiting doctor or they are taken to Goa Medical College Hospital, if necessary. Training in tailoring and needlework is also imparted. The Government in co-ordination with an NGO, ' Arz' provides conselling and training in various disciplines. They are also provided training in bead work, painting, mushroom, cultivation etc. In Baina area, schools, Anganwadis, medical centre, have been set up. The NGO Asha Seva Sadan, Desterro Eves & ARZ provide counselling awareness, campaigns, and conduct socio economic activities, tailoring, etc. in the area. Action has been taken by the State Government to repatriate the rescued victims to their home States and in some cases the victims willing to give up the profession, are

rehabilitated.

7. The Committee appointed by the National Commission for Women had submitted its report, which was forwarded to the State Government by letter of January 8, 2000. The report is a study of the problems of the women in prostitution in Baina and the recommendations for their rehabilitation. The Committee chaired by Mr. Justice G.D. Kamat (Retd.), has come to the conclusion that the sex workers are being imported into Goa mainly from neighbouring States such as Karnataka and Andhara Pradesh, as also from some other States. It found that The economic weakness of the weaker section has become a strength of traders for trafficking in women. The Committee records that they were informed by the sex workers that large number of sex workers come from Andhra Pradesh and they come regularly in a group of not less than 2000 to 2500 sex workers. They are there for a period of time and later on are transferred to other destinations for similar trade. It is its finding that the sex workers coming from Andhra Pradesh and Karnataka are under some sort of a contract for a - specified period at Baina and later on they are taken to other destinations over a period of time. In many cases, money is exchanged with their parents in their native villages. It noted that acceptance of money by parents comes out of economic necessity. Young girls are brought under the pretext of employment and once they are brought and trapped, they are introduced into flesh trade. There is one more class of girls who walk out of the house for some reasons, and get entangled into the flesh trade. It is then pointed out that Gharvalis are an institution in themselves. They were

at one time either voluntary workers or victims of the flesh trade. Once a Gharvali has established herself after being a sex worker for sometime and on withering by age, she assumes the role of a mother prostitute in so far as young sex workers are concerned and she becomes a middle person between the agents/touts and the contractors who import the girls at Baina. The money is received by Gharwalis and what is finally received by a sex worker, is a small pittance. It is noted that Gharwalis generally own certain number of cubicles which are used for sex trade. The cubicles where sex trade goes on number anywhere about 250. These cubicles are adjacent to one another and separated by a narrow lane for egress and ingress. These cubicles are just behind a large number of bars-cum-eating places which are facing the beach and sea with open land and road in between. The modus operandi of the sex workers is that they gather at these bars, mainly during sun set time from where they are picked up or chosen and once the deal is established, the cubicles are used for that purpose. Some of these are also taken outside Baina to other part of the State. There are about 27 bars-cum-eating houses. The bar business flourishes in this zone, both for drinking and as eating places. The so called sex workers zone is just about 9000 sq. metres in area.

. The committee has reached to the conclusion that the owners of the liquor business have nexus with the gharwalis and the sex workers, with the result, the bar business and sex works have become inter-dependant. The land on which the structures are located, belong to the State Government and the Mormugao Municipal Council The

State Government issued notices under Section 14, read with Section 40 of the Land Revenue Code. On account of the notices being issued, there is a fear in the minds of the sex workers that not only their trade and livelihood is in danger, but they are also likely to lose their shelter. The report also refers to the complaints by the sex workers that fake raids are conducted not with a view to satisfy the provisions of Immoral Traffic Act (Prevention) 1956, but to extract money from them and harass them.

The Committee then noted that there is demand from the public in general, that the Baina Beach be freed from the menace of sex workers and flesh trade. The Baina Beach used to be frequented by people in the evenings and more particularly on Saturdays and Sundays, but now it is infested with sex workers and hence Baina Beach has become a taboo and no decent person or children can think of using Baina Beach. There is also apprehension in the minds of the public that AIDS has already spread and are likely to further spread if strict precautions are not taken for removal of these people from the Town of Vasco-da-Gama. The Committee also noted that there was a proposal to widen the road and when this project will be implemented, the bars and cubicles will have to be demolished. Serious consideration will have to be given them for rehabilitation of the sex workers. The Committee noted that the sex workers have to go to the Government Dispensaries and the only scheme provided is free distribution of condoms. Two hundred fifty cubicles which are used by the sex workers, have customers which are not less than 300 to 400 per day/night. In the

light of that, the Committee recommended that the socio-economic profile of women in prostitution in Baina, needs to be drawn through appropriate agency/ies. The committee has recommended that The Government of Goa needs to make a clear statement of the need to evict the women in prostitution, after considering the recommendations by ensuring alternate site and in the event, displacement is inevitable, the State Government to provide appropriate rehabilitation measures vis-a-vis, shelter, livelihood, health facilities, vocational assistance.It further recommended that survey needs to be done to find out whether the unfortunate sex workers want to go back to their respective States, in which event, the National Commission for Women, with the assistance of respective State Government and respective State Commission for Women should work out rehabilitation programme. It has further recommended that steps should be taken for the purpose of prevention of trafficking of women/girls into Goa from neighbouring States and the National Commission for Women should take up with the Central Government and other State Governments to take measures to eradicate the root causes and to control trafficking of women and girls and stop the migration of sex workers from one State to another. There are other recommendations of the Committee.

8. Apart from the letter dated January 8, 2000 forwarding the report with State Government . We are not aware whether the National Commission for Women has taken any steps or follow up measures. However, from the affidavit of the State Government, it is clear that some of the issues are before the Apex Court, in the

pending case filed by Shakti Vahini.

9. The report of the Committee appointed by the National Commission for Women would indicate that the CSWs are brought to Goa from the States of Andhra Pradesh, Karnataka, as also from the States of Tamil Nadu and Maharashtra. The reasons mostly being their economic weakness The area where the C.S.W.are located and function from is also identified. There are about 250 cubicles wherein the sex trade is being carried on is now established by the Justice Kamat Committee report. From the reports available which has been forwarded by the Sr. Superintendent of Police, Crime, Panaji to the Director of Women and Child Development, for the quarter ending 31.12.2002, the number of cases registered was only four. From the file produced, it is seen that there is a rehabilitation project for Baina Beach Slum. The Circular issued notes that the citizens of Vasco/Goa and domestic/foreign tourists are being subjected to humiliation during their visit to Baina Beach and decent people avoid to visit the Baina Beach. The police report for the quarter ending 30.9.2001 shows that two cases were filed under Section 4 of the I.T.P. Act and 7 cases under Section 8 and the half year ending 30/9/2001 shows 4 cases registered under Sections 4 and 18 cases under Section 8. From the material analysed, it is clear that it is not as if the local residents have no objection to the presence of sexual workers. On the contrary, there is strong resentment on the activities being carried on. Though on the one hand the need to rehabilitate the sex workers is important, yet on the other, the State Government specially as the facts have come on record that the sex workers are being

brought from other States cannot be called upon to rehabilitate such sex workers. The duty in such case is of the State from where they hail. At the highest the State Government can be called upon to meet the cost of transport of sex workers to the State from where they came. The need to protect the rights of the law abiding citizens at the same time has to be asserted. The sex workers cannot cause inconvenience to other citizens and their right to life to live in a surrounding free from a moral activities.

. In the light of that, the following directions need to be issued.

. (1) The State Government is directed to take steps based on the report of the Inquiry Committee headed by Justice Kamat (Retd) appointed by the National Commission for Women and forwarded by letter of January 8, 2000 to the extent it is within the jurisdiction of the State Government and submit compliance report.

. (2) take steps to effectively implement the Judgment of the Apex Court in Gaurav Jain vs. Union of India and ors. 1997 (8) SCC 114;to the extent it is not yet implemented.

. (3) considering the finding of the Committee that 250 cubicles are being used for carrying on sex trade,and the objection by the local community the District Collector of the concerned area is directed to take steps alongwith other concerned officers under the provisions of I.T.P.A.or the other relevant laws. to close down the said cubicles by following the due

process of law.

. (A) If the said 250 cubicles constructions are illegal and on the government or land belonging to local authorities then to take steps to evict the illegal occupants and then demolish them by following due process of law.

(4) the State Government also to take adequate steps to prevent the CSWs being brought into the State of Goa on contract basis as noted by the Justice Kamat Commission.

. (5) Since the Commercial Sex Workers are being brought from outside the State of Goa, into the State of Goa, the Government of Goa is not bound to rehabilitate them except to the extent provided by specific directions in the judgments of the Apex Court. The rescued Commercial Sex Workers be deported to the State from where they come. The Goa State Commission for Women with the National Commission for Women to take steps so that the said women are rehabilitated in the State from where they hail with the assistance of the respective State Governments.

. (6) National Commission for women within nine months from today to file report with this Court as to what steps they have taken for implementing the recommendations of the Justice Kamat(Retd) Committee appointed by them.

. We direct all concerned parties to submit the compliance report to this Court within nine months on

the directions. A copy of the order be sent by the Registry to the National Commission for Women, New Delhi.

. Rule in terms of the directions contained in paragraph ten.

F.I. REBELLO, J.

P.V. HARDAS, J.